



POLICE DEPARTMENT

In the Matter of the Disciplinary Proceedings : X

- against - : FINAL

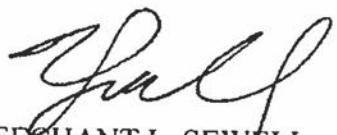
Police Officer Eduardo Vite : ORDER

Tax Registry No. 916873 : OF

Bronx Court Section : DISMISSAL

Police Officer Eduardo Vite, Tax Registry No. 916873, having been served with written notice, has been tried on written Charges and Specifications numbered 2020-22727, as set forth on form P.D. 468-121, dated October 7, 2020, and after a review of the entire record, Respondent is found Guilty of Specifications 1 and 4 and Not Guilty of Specification 2 and 3.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Eduardo Vite from the Police Service of the City of New York.



KEECHANT L. SEWELL  
POLICE COMMISSIONER

EFFECTIVE: 3/3/2022



POLICE DEPARTMENT

January 10, 2022

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In the Matter of the Charges and Specifications : Case No.  
- against - : 2020-22727  
Police Officer Eduardo Vite :  
Tax Registry No. 916873 :  
Bronx Court Section :

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At: Police Headquarters  
One Police Plaza  
New York, NY 10038

Before: Honorable Josh Kleiman  
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Samuel Yee, Esq.  
Department Advocate's Office  
One Police Plaza  
New York, NY 10038

For the Respondent: John Tynan, Esq.  
Worth, Longworth, & London, LLP  
111 John Street, Suite 640  
New York, NY 10038

To:

HONORABLE KEECHANT L. SEWELL  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NY 10038



## REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on December 2, 2021. Respondent, through his counsel, pleaded Not Guilty to the subject charges. The Department called Sergeant John Filippi and Police Officer Saqib Mahmoud as witnesses. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent Guilty of Specifications 1 and 4 and Not Guilty of Specification 2 and 3, and recommend that Respondent's employment with the New York City Police Department be terminated.

## ANALYSIS

It is undisputed that on September 28, 2020, at approximately 12:34 p.m., Police Officer Saqib Mahmoud, 70<sup>th</sup> Precinct, and his partner, responded to a radio call reporting a domestic incident involving a police officer at GJ's residence, which she shared with Respondent. The radio call was based on a 911 call placed by GJ's sister, MZ. On the 911 call, MZ reported that her sister, GJ, called her crying and complaining that Respondent had "destroyed their room." MZ explained that "[h]e's been abusing her," "has a gun," "he always drink[s] [and] goes to work drunk," and that since she was currently at work she decided to call the police. According to Police Officer Mahmoud, upon his arrival no one answered the door to GJ's residence. Police Officer Mahmoud contacted his patrol supervisor, Sergeant John Filippi. Upon Sergeant Filippi's arrival, the officers again knocked on GJ's door. After approximately half an hour, GJ answered the door. (Tr. 10, 12-13, 30-33; Dept. Exs. 2, 2C)

According to Sergeant Filippi and Police Officer Mahmoud, GJ was upset and fearful, explaining that she and Respondent had been involved in a verbal dispute, after which

Respondent knocked over a shelf.<sup>1</sup> GJ further reported prior incidents of domestic violence. According to Sergeant Filippi, GJ stated that, in July 2020, she and Respondent had been involved in “multiple” disputes, during which Respondent had “struck her with a firearm” and “placed his firearm up to her neck/throat area.” Sergeant Filippi also spoke with GJ’s daughter, who stated that although she did not see the incident that day between Respondent and GJ, she heard “on multiple occasions altercations going on inside her mother’s room.”<sup>2</sup> Sergeant Filippi then informed his commanding officer and transported GJ to the 70<sup>th</sup> Precinct. (Tr. 13-17, 33-34, 36-39)

At the precinct, GJ initially refused to prepare a Domestic Incident Report. A report was prepared by Police Officer Mahmoud’s partner based on statements made by GJ.<sup>3</sup> According to Police Officer Mahmoud, GJ related that on a prior occasion Respondent “pull[ed] a firearm on her and also assaulted her.” (Tr. 36-37, 39, 46)

The Department entered transcripts and audio recordings of Department interviews conducted at the 70<sup>th</sup> precinct on September 28, 2020, of GJ, GJ’s sister, NJ, and GJ’s daughter, YL (Dept. Exs. 2, 2A-2B, 2D), none of whom appeared at trial to testify. The relevant portions of these hearsay statements, as to each charge, are detailed below. The Department also submitted the audio and corresponding transcript of the 911 call made by MZ (Dept. Exs. 2, 2C). GJ, GJ’s sisters, NJ and MZ, as well as GJ’s daughter, YL, consistently described Respondent as abusive toward GJ (Dept. Ex. 2C at 2-5; Dept. Ex. 2D at 4-5, 10-12; Dept. Ex. 2B at 18-22, 30; Dept. Ex. 2A at 2-3).

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<sup>1</sup> Police Officer Mahmoud took several pictures of the room containing the shelf (Dept. Ex. 1a-1c). The photographs depicts various items strewn across the floor and a tall, black wire shelf off-kilter.

<sup>2</sup> The Tribunal was not presented with any further detail concerning the daughter’s statements.

<sup>3</sup> The parties stipulated that the “bulk” of the DIR was prepared by Police Officer Mahmoud’s partner and that GJ wrote six words. The Department did not seek to admit the DIR into evidence (Tr. 47-48).

*Specification 1 – Firearm Display and Point (July 2020)*

Respondent is charged with inappropriately displaying and pointing his firearm at GJ in July 2020.

In her hearsay statement at the precinct on September 28, 2020, GJ explained that she and Respondent had been seeing each other for approximately two years and had been living together for approximately one year (Dept. Ex. 2A at 14-15; Dept. Ex. 2B at 22; Dept. Ex. 2D at 6). GJ explained that in July 2020, after she told Respondent that she was “glad that bitch,” referring to his ex-wife, “[d]ivorc[ed] you because you deserve it,” Respondent “got me at the corner” of the bedroom, and placed his firearm to her neck. GJ stated that, nevertheless, she “wasn’t afraid.” GJ shouted for her daughter to help her, but her daughter told her that she did not want to get involved (Dept. Ex. 2A at 4-5, 63-64). GJ identified the gun placed to her neck as a smaller version of a “Glock, 9 millimeter” (Dept. Ex. 2, Audio of GJ Interview, at 51:56-52:10).

GJ was not sure where Respondent “got” the firearm from, but stated that, previously, when they slept in the same bed, he used to sleep with a gun under his pillow (Dept. Ex. 2A at 66-67). She stated, however, that incidents like this usually involved alcohol and Respondent is a “different person” when he does not drink (Dept. Ex. 2A at 20-21).

Sergeant Filippi testified that GJ informed him at the scene on September 28, 2020, that in the past “at one point, they had an argument in the hallway [] and placed his firearm up to her neck/throat area” (Tr. 14). Police Officer Mahmoud testified that on September 28, 2020, GJ told him that Respondent “did pull a firearm on her and also assaulted her in the past” (Tr. 36).

GJ’s daughter, YL, stated in her September 28, 2020 precinct interview that her mother told her that Respondent had “hit her with a gun before” and YL once observed that her mother was wearing a scarf to cover up bruises on her neck (Dept. Ex. 2, Audio of YL Interview, at 5:25-6:02). YL further stated, “when [Respondent] drinks he gets aggressive” (Dept. Ex. 2D at

6). GJ's sister, NJ, in her September 28, 2020 precinct interview, did not mention an incident involving a gun pointed at GJ's neck, but stated "when [Respondent] drinks, that's when things go off"<sup>4</sup> (Dept. Ex. 2B at 11).

Respondent testified that he never displayed or pointed a gun at GJ. He admitted that in the summer of 2020 he kept a Glock 26 at home (Tr. 68).<sup>5</sup> Respondent stated that he kept the gun in a safe in his bedroom.

"[I]t is well established that, in an administrative hearing, hearsay is admissible . . . Further, hearsay evidence 'may, under appropriate circumstances, form the sole basis of an agency's determination'" (*Matter of Cauthen v. NY State Justice Ctr. for the Protection of People with Special Needs*, 151 AD3d 1438, 1440 [3d Dept 2017] [internal citations omitted]). Where, as here, the hearsay is controverted and central to the Department's case, however, it must be carefully scrutinized and bear sufficient indicia of reliability in order to be accorded any significant weight (see *Disciplinary Case No. 2015-14073* [Dec. 19, 2016]).

Here, GJ's hearsay statement is sufficiently corroborated to satisfy the Department's burden of proof. GJ had a firm memory that "[t]wo months" ago Respondent held a gun to her neck. Both Department witnesses also confirmed during their trial testimony that GJ told them at the scene about an incident in which he "pull[ed] a firearm on her," and Sergeant Filippi also testified that GJ described the gun being held to her "neck/throat area." In a separate hearsay

<sup>4</sup> YL remembered another incident, which GJ mentioned during her interview as well, when Respondent let GJ's [REDACTED] hold his gun (Dept. Ex. 2A at 18; Dept. Ex. 2D 7-8). NJ further related an incident on September 23, 2020, at GJ's [REDACTED] birthday where she claimed Respondent said, "I have my two guns here and they are loaded and I feel like shooting somebody now" (Dept. Ex. 2B at 27). GJ, at her interview, also recalled this incident, but remembered Respondent saying, "I got my gun full. I can take all of you down" (Dept. Ex. 2A at 8). Respondent was not asked about either of these two other incidents at his Department trial.

<sup>5</sup> At GJ's interview, one of the Department investigators showed her their service weapon, identifying it as a Glock. GJ identified the gun Respondent held to her neck as like the investigator's Glock, but smaller. The Tribunal takes judicial notice that the Glock 26 is one of the smaller Glock models and is smaller than the Glock 17 and Glock 19, which are the only Glock models authorized (in specified generations) to be used as service weapons in the Department (see Operations Order 29 of 2021).

statement, GJ's daughter, YL, remembered GJ telling her that Respondent had "hit her with a gun before" and that she had worn a scarf to cover bruises on her neck. While Department investigators did not establish a timeline for when YL heard from GJ that she had been "hit" with a gun and GJ did not herself mention any bruising in connection with Respondent holding a gun to her neck, the statements of YL, in conjunction with those of NJ and MZ, nevertheless support a credibility determination in GJ's favor. All of these witnesses corroborated a history of abuse. Respondent failed to account for this history during his testimony; instead claiming, in a manner found to be incredible by this Tribunal, that he had never been "verbally" or "physically" abusive toward GJ (Tr. 62). Based on a preponderance of the credible evidence, the Tribunal finds Respondent Guilty of Specification 1.

*Specification 2 – Punch to Back (September 13, 2020)*

Respondent is charged with striking GJ on September 13, 2020.

At her September 28, 2020, interview, GJ stated that "two weeks" prior, "I think . . . on 13th," when she was released from a hospital in connection with a heart condition (Dept. Ex. 2A at 68), Respondent hit her. She explained that prior to arriving home, she had spoken with Respondent on the phone and it sounded to her like he had been drinking. When she arrived home, she stated that Respondent was "so drunk." While GJ was interacting with her daughter, Respondent punched GJ in the back. GJ described the punch as "hard," which caused her pain. (Dept. Ex. 2A at 68-71)

No further details concerning this incident were provided to the Tribunal. Neither GJ's sister, NJ, nor GJ's daughter, YL, mentioned this incident during their interviews. And neither Sergeant Filippi nor Police Officer Mahmoud testified concerning any statements made by GJ concerning this incident. The Department made no mention of GJ being punched in the back at

trial (Tr. 95). Respondent was not asked any questions concerning this incident, but did deny ever hitting GJ (Tr. 62).

That hearsay is admissible in this Tribunal does not mean that it must be accorded dispositive weight absent corroboration, or that it is to be accorded any weight, if it is unreliable (*see Dep't of Environmental Protection v. Cortese*, OATH Index No. 1613/06 [Sept. 12, 2006]). Where sufficient corroboration is lacking, the Tribunal need not rely on it (*see Prince, Richardson on Evidence* § 8-102).

Here, the absence of any corroborating evidence concerning GJ being punched by Respondent two weeks prior to the September 28, 2020 incident is problematic. Whereupon several witnesses who had spoken with GJ concerning prior acts of domestic violence were formally interviewed, not one claimed to have knowledge of the punch. This is especially notable given that GJ stated that she was interacting with her daughter when Respondent punched her. While the Tribunal finds no reason to discredit GJ in connection with the incident charged in Specification 2, it finds that the Department has failed to submit a sufficient quantum of proof in connection with GJ's hearsay statement to establish its charge by a preponderance of the evidence.

Accordingly, Respondent is found Not Guilty of Specification 2.

*Specification 3 – Damage to Door (September 28, 2020)*

At her September 28, 2020 precinct interview, GJ stated that “this morning” she locked her door and was sleeping when Respondent “broke into the door” (Dept. Ex 2A at 6, 38). GJ’s sister, NJ, confirmed in her interview that GJ had told her that Respondent had “broke the door” while she was sleeping. NJ further stated that GJ sent her a video of “what happened” (Dept. Ex.

2B at 4).<sup>6</sup> NJ remembered that on a prior occasion Respondent had so damaged GJ's door that the whole door had to be replaced (Dept. Ex. 2B at 21). GJ's daughter, YL, did not specifically mention damage to a door that day but stated, "he just get aggressive with her when she threatens his job. Like, once you threaten his job, it's over. The door is break. The pots is slamming (sic). And I don't know if sometimes he knows if I'm there." When asked about what had happened that morning, however, YL stated, "I, I heard the door open this morning. So, I think he came at 7:00 in the morning. And I don't know. I just heard them arguing. . . . And I think she was accusing him or something. I don't know. And then, he would like next time you accuse me, make sure you got your facts together and then that's when they went left (sic) or whatever" (Dept. Ex. 2D at 3-4).

Sergeant Filippi and Police Officer Mahmoud were unaware of any damage to a door (Tr. 18, 41-42). No discernable damage to a door is depicted in the photographs of GJ's apartment presented to the Tribunal (Dept. Ex. 1a-1c; Tr. 84) and no "video" was submitted to the Tribunal.

While there is some corroboration from GJ's sister, NJ, to support GJ's statement to Department investigators at her interview that Respondent "broke" the door, sufficient corroboration is lacking. Here, uniformed members of the service responded to GJ's apartment and took photographs of the damage alleged. Had GJ made them aware of damage to her door, the extent of the damage could have been documented and presented to Respondent and this Tribunal. Property damage is inherently different from damage to a person as it may often be documented independent of the complainant and with relative certainty. Here, there is insufficient proof to establish that Respondent damaged a door.

Accordingly, Respondent is found Not Guilty of Specification 3.

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<sup>6</sup> No video was submitted to the Tribunal.

*Specification 4 – Failure to Request Patrol Supervisor and Remain at Scene (September 28, 2020)*

At her September 28, 2020 interview, GJ stated that earlier that morning she had been sleeping behind a locked door when Respondent “broke” into her room (Dept. Ex. 2A at 5-6). Respondent confronted her because she had sent a text message to a friend of Respondent’s “from his precinct,” asking him to talk to Respondent about how he was treating her (Dept. Ex 2A at 6, 37, 78). Respondent was also upset because she had seen a “little duck . . . [a] squeaky duck” in his bag and “got mad because [she] was going through his stuff.” GJ further stated that Respondent was “drinking” (Dept. Ex 2A at 75).

At trial, Respondent testified that on September 28, 2020, he received a text message from GJ stating that an older lady had given him a “man purse.” Respondent explained that the “man purse” was a Tumi bag that he had purchased himself for his 50<sup>th</sup> birthday. He added that inside the bag was a “rubber ducky” he had brought home from work (Tr. 52). Respondent said that he then entered GJ’s room, where she was “sleeping” (Tr. 52-53). Respondent showed her the text message, but she did not respond. So he “just explained what this was about.” Then he “walked out of the room cause I got no response from her.” Respondent then walked to the bedroom he was sleeping in and decided he would go “check” on his car. As he was leaving his bedroom, he “kicked” a “foot locker in front of a bakers rack” “to kick it out of the way so I don’t trip over it and my foot got stuck in one of the legs of the bakers rack,” causing it to “topple over” (Tr. 54-55). Respondent “picked it up, pushed it out of the way” and left (Tr. 55).

Approximately, 15 to 20 minutes later, while sitting in his car “warming it up,” he received a call from GJ’s sister, MZ, who informed him that “she called the police and she gave them my name.” (Tr. 70, 75). Following the call from MZ, Respondent testified that he called GJ “a couple of times,” but she did not pick up “initially” (Tr. 56). When asked if she eventually

picked up, Respondent testified, "I don't recall any conversations" (Tr. 57). Respondent testified that, nevertheless, he determined it was a "joke" (Tr. 57). He shut off his car "because I had already warmed it up" and decided "to just take a walk and see what else is around the neighborhood cause I heard they have good, you know, eateries" (Tr. 76). He then stopped to watch a soccer game (Tr. 57). During the soccer game, he received a call from a precinct delegate who told him to report to the 70<sup>th</sup> Precinct. Respondent proceeded to the precinct as directed (Tr. 58).

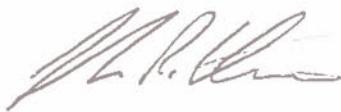
In her hearsay statement, GJ's daughter, YL, stated that earlier that day, "in the morning," she had heard Respondent and GJ arguing. She then played a video in which she had captured some of the verbal dispute. During the audio, a female can be heard speaking. A male voice then says in a loud voice, "Look who's talking, fucking bitch. That's all you know how to be, a fucking bitch." YL also told Sergeant Filippi at the scene that she had heard an argument. (Dept. Ex. 2D at 3-4; Tr. 22)

Pursuant to Patrol Guide Section 212-32, a member of the service at the scene of a family dispute must either remain at the scene and contact a Patrol Supervisor or, if remaining at the scene is "inappropriate," "must promptly notify the desk officer [in the] precinct of occurrence[] and be guided by the desk officer's instructions." Respondent did neither. Instead, having been told that 911 had been called and the caller "gave them my name," Respondent left to allegedly take a stroll in his neighborhood. Based on the preponderance of the credible evidence, Respondent was present at the scene of a family dispute and violated P.G. 212-32 when he left the scene without contacting a Patrol Supervisor.

Accordingly, Respondent is found Guilty of Specification 4.

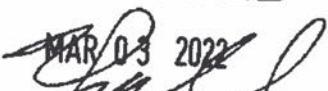


Respectfully submitted,



Josh Kleiman  
Assistant Deputy Commissioner Trials

**APPROVED**



MAR 03 2022  
KESHANT L. SEWELL  
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials  
To: Police Commissioner  
Subject: SUMMARY OF EMPLOYMENT RECORD  
POLICE OFFICER EDUARDO VITE  
TAX REGISTRY NO. 916873  
DISCIPLINARY CASE NO. 2020-22727

Respondent was appointed to the Department on June 30, 1995. On his three most recent annual performance evaluations, he received overall ratings of “Exceeds Expectations” for 2017, 2018, and 2019. Respondent has been awarded seven medals for Excellent Police Duty.

In 2016, Respondent forfeited 31 pre-trial suspension days and was required to comply with counseling after pleading Guilty to (i) damaging property during a domestic dispute, (ii) consuming an intoxicant to the extent that he was unfit for duty, (iii) failing to notify his Commanding Officer that he was permanently residing at a location within the 30th Precinct, where he was assigned, and (iv) failing to provide the Department with his accurate and current residential address. In connection with that matter, Respondent was placed on Level 2 Discipline Monitoring from December 19, 2014, to October 20, 2016.

In connection with the instant matter, Respondent was suspended from September 28, 2020, to October 27, 2020, and subsequently placed on modified assignment on October 28, 2020; he remains modified to date.

For your consideration.

A handwritten signature in black ink, appearing to read "Josh Kleiman".

Josh Kleiman  
Assistant Deputy Commissioner Trials